

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

OAG 1-01

January 30, 2001

Ms. Marlene A. Cummings
Secretary
Department of Regulation and Licensing
1400 East Washington Avenue
Madison, WI 53702

Dear Ms. Cummings:

At the request of the Chiropractic Examining Board ("Board"), you ask my opinion whether a person certified as a physical therapist or registered as a massage therapist and bodyworker, and who is not licensed as a chiropractor, may perform procedures identified in your letter as "chiropractic adjustment," "spinal manipulation," "chiropractic manipulation" or "spinal adjustment," and used interchangeably. Unfortunately, the generality of your questions and the lack of definitional guidance in the statutes and administrative rules that pertain to the professionals in question limits the conclusions I am able to draw. Although neither a physical therapist nor a massage therapist may lawfully perform a chiropractic adjustment unless licensed as a chiropractor, not every form of therapeutic touch involving the neck, back, joints or connective tissues constitutes a chiropractic adjustment.

Although the practice of chiropractic is defined in the statutes and the administrative code, the essential terms in your inquiry are not defined by statute or rule. Section 446.01(2) of the Wisconsin Statutes provides that the "[p]ractice of chiropractic" means:

(a) To examine into the fact, condition, or cause of departure from complete health and proper condition of the human; to treat without the use of drugs as defined in s. 450.01(10) or surgery; to counsel; to advise for the same for the restoration and preservation of health or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect or in expectation thereof; and

(b) To employ or apply chiropractic adjustments and the principles or techniques of chiropractic science in the diagnosis, treatment or prevention of any of the conditions described in s. 448.01(10).

The conditions described in section 448.01(10) are "the fact, condition or cause of human health or disease."

[=OAG 1,01 2] Wisconsin Administrative Code § Chir 4.03 amplifies the statutory definition of the “practice of chiropractic,” and provides:

The practice of chiropractic is the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and adjacent tissue which includes diagnosis and analysis to determine the existence of spinal subluxations and associated nerve energy expression and the use of procedures and instruments preparatory and complementary to treatment of the spinal column, skeletal articulations and adjacent tissue. Diagnosis and analysis may include physical examination, specimen analysis, drawing of blood, blood-analysis and the use of x-ray and other instruments.

Wisconsin Administrative Code § Chir 4.02 defines “chiropractic science”:

(1) "Chiropractic science" means that body of systematic and organized knowledge relating primarily to the identification, location, removal or reduction of any interference to nervous system integrity or nerve energy expression and the resulting change in biomechanical or physiological homeostasis. It is based on the major premise that disease or abnormal function may be caused by abnormal nerve impulse transmission or expression due to biochemical factors, compression, traction, pressure or irritation upon nerves as a result of bony segments, especially of the spine or contiguous structures, either deviating from normal juxtaposition or function which irritates nerves, their receptors or effectors.

The administrative code definition of the practice of chiropractic is expansive, in that it permits “adjustments” (an undefined term) not only of the spinal column, but also the adjustment of other “skeletal articulations” (*i.e.*, “joints,” in the common parlance), and the adjustment of tissue adjacent to the spinal column and other skeletal articulations. Some of the “adjustments” performed by chiropractors may be “spinal adjustments,” but the adjustment of other skeletal articulations, and the adjustment of the tissues adjacent to skeletal articulations (presumably “soft tissue,” in the common parlance) are not adjustments of the spine, even though they may be chiropractic adjustments within the administrative code definition of the “practice of chiropractic” and also “chiropractic adjustments” as your inquiry appears to use the term.

The difficulty in answering your question is increased by including “the use of procedures . . . preparatory and complementary to treatment of the spinal column, skeletal articulations and adjacent tissue,” all undefined, within the administrative code definition of the practice of chiropractic.

[=OAG 1,01 3] If the operative terms in the administrative code definition of the practice of chiropractic are given their common meaning,¹ it is clear that chiropractic practice, physical therapy practice and massage therapy practice may overlap under some circumstances. “Physical therapy” is defined by section 448.50(4) to be, in relevant part, “that branch or system of treating the sick which is limited to therapeutic exercises with or without assistive devices, and physical measures including heat and cold, air, water, light, sound, electricity and massage; and physical testing and evaluation.” “Physical therapy” is not further defined by administrative rule. “Massage therapy” is defined by section 440.98(4)(a) to be, in relevant part “the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body.” Wisconsin Administrative Code § RL 90.02(7) repeats the statutory definition of “massage therapy.” “Manual action” is defined to include “holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body and applying friction to soft tissue.” Wis. Stat. § 440.98(2); Wis. Admin. Code § RL 90.02(5).

One area of apparent intersection among the three disciplines is in their attention to the soft tissues of the body. For example, to the extent that a physical therapist or massage therapist provides hand massage to the soft tissue adjacent to a skeletal joint, the physical therapist or massage therapist makes an “adjustment” to that tissue – an action that is potentially also within the scope of chiropractic practice. Physical therapy and chiropractic also intersect in that both may address the alignment of the body. To the extent that a physical therapist teaches a therapeutic exercise by, *e.g.*, aligning the patient’s pelvic girdle to change the patient’s balance point, or straightens the patient’s spine to demonstrate proper lifting technique, the physical therapist engages in an adjustment of the patient’s joints, within the common meaning of that term, and therefore performs an activity which may be within the definition of the practice of chiropractic.

¹Your letter includes a number of definitions of the terms “chiropractic adjustment,” “chiropractic manipulation,” “spinal manipulation” and “spinal adjustment.” Some come from the opinions of attorneys general in different states, or from administrative regulations in other states. One appears to be based on an uncoded distinction made by the Chiropractic Examining Board between “manipulation” and “mobilization,” based on the lever length, velocity and amplitude of the respective procedures. Another comes from a Wisconsin Court of Appeals’ decision in *Kerkman v. Hintz*, 138 Wis. 2d 131, 134 n.2, 406 N.W.2d 156 (Ct. App. 1987), *aff’d in part and rev’d in part*, 142 Wis. 2d 404, 418 N.W.2d 795 (1988) (both courts holding that a chiropractor should be held to a “reasonable chiropractor” standard, and not a “reasonable physician” standard in chiropractic negligence cases). The definitions from other states, and the attorney generals’ opinions interpreting the laws of other states are of only limited utility in interpreting the differently worded laws of Wisconsin. The Board’s uncoded distinction is unhelpful precisely because it is uncoded. The definition of chiropractic “adjustment” in the *Kerkman* case is completely nonessential to the holding in the case, because the issue involved only the standard of care to which chiropractors should be held, and not the substantive content of chiropractic, physical therapy or massage therapy practice.

[=OAG 1,01 4] Despite the apparent expansiveness of the procedures included within the definition of chiropractic practice, the intersections among chiropractic practice, physical therapy and massage therapy are limited in one crucial respect. Each of the activities within the definition of chiropractic practice must involve “the application of chiropractic science” in order to be part of the practice of chiropractic. The current definition of chiropractic practice recognizes that chiropractors do not have a monopoly on the application of therapeutic touch to the neck, back and joints, and recognizes that it is the application of chiropractic science which distinguishes chiropractic from other healing arts and sciences involving therapeutic touch. Thus, for example, if a specific type of therapeutic touch were administered by a physical therapist applying the principles of physical therapy science, or by a massage therapist applying the principles of therapeutic massage, those procedures would not be within the definition of chiropractic science, because neither would involve the application of chiropractic science, even if nearly identical physical motions were performed by a chiropractor. Terms such as “adjustment” and “manipulation” have a variety of appropriate meanings to various healing disciplines as the examples above demonstrate. Further efforts by the Chiropractic Examining Board to define the particular procedures described in your inquiry should focus on the unique, specific features of the discipline of chiropractic science.

The Legislature has recognized the possibility that chiropractic practice and physical therapy practice may overlap. Sections 446.02(10)(a) and 448.525(1) both provide that the Chiropractic Examining Board and the Physical Therapists Credentialing Board “shall jointly promulgate rules that establish the circumstances under which and the extent to which a chiropractor . . . may claim to render physical therapy or physiotherapy services within the scope of the practice of chiropractic.” Moreover, sections 446.02(10)(b) and 448.525(2) prevent either board from unilaterally promulgating rules defining the physical therapy practice of chiropractors. At the time this opinion is written, no joint rules have been promulgated.

[=OAG 1,01 4-5] The courts and this office have also recognized that the disciplines of various health care professionals may overlap. In *Kerkman*, 142 Wis. 2d at 416, the court recognized that “[a]lthough chiropractors are permitted to use some medical tools when analyzing and treating a patient, this overlap does not transform the practice of chiropractic into the practice of medicine.” In 68 Op. Att’y Gen. 316 (1979), my predecessor concluded that a physician could advise a patient whether continued chiropractic care was necessary without engaging in the unauthorized practice of chiropractic, even though that advice may technically fall within the definition of chiropractic practice. That opinion considered the general law on litigated disputes between engineers and architects over the scope of their respective practices, quoting 5 Am. Jur. 2d *Architects* § 3 (68 Op. Att’y Gen. at 319-30):

[W]here either a licensed architect or a licensed engineer performed services which could properly be regarded as within the reach of the statute licensing his profession and also within the statute licensing the other profession, he performed

such services under the statute under which he was licensed and was not affected by the fact that they came incidentally within the purview of the other licensing statute.

The opinion further stated (68 Op. Att'y Gen. at 320):

It is my opinion that a similar line of reasoning must be applied to chiropractors and physicians. In giving advice to patients, there is an overlap between what may properly be done by a chiropractor and a physician under their respective grants of statutory authority. In my view, a physician is given the latitude to perform services within his or her authority, whether those services overlap with professional services properly performed by a chiropractor, or other health care professional.

To find otherwise would be to place unreasonable restraints on the practice of medicine. As summarized by the court in *Smith v. American Packing & Provision Co.*, 102 Utah 351, 130 P.2d 951, 955 (1942), "the mere fact that a licensed profession extends in some degree into the field of some other licensed occupation, does not require the licensee to have a license in each of the fields into which his profession may overlap, unless the statutes impose such requirement." Our statutes impose no such requirement. It is therefore my opinion that physicians may advise their patients whether or not continued chiropractic care is necessary. By so doing, physicians are not engaging in the unauthorized practice of chiropractic.

In the absence of a more specific explication of the operative phrases of the practice statutes involved – particularly, sections 446.01(2), 448.50(4) and 440.98(4)(a) – by the administrative rules each of the respective examining or credentialing boards or department is authorized to promulgate, my opinion is limited to the general proposition that physical therapists and massage therapists are not prohibited from performing the activities that are within their respective scopes of practice, even if those activities extend in some degree into the field of chiropractic practice.

Ms. Marlene A. Cummings
Page 6

[=OAG 1,01 6] Consistent with sections 446.02(10)(a) and 448.525(1), I urge the Chiropractic Examining Board to begin the legislatively-mandated process of promulgating joint rules with the Physical Therapists Affiliated Credentialing Board. I encourage both boards to sharpen the definitions of their respective practice areas, in order to give both chiropractors and physical therapists adequate guidance about the permissible scope of their respective practices.

Sincerely,

James E. Doyle
Attorney General

JED:BAO

CAPTION:

Discussion of overlapping areas of practice of chiropractors, physical therapists and massage therapists. License in each discipline not required where overlap exists.